

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7107 PCB SPCP 09-01

Determination of Resident Status for Tuition

Purposes

**SPONSOR(S):** State Universities & Private Colleges Policy Committee

**TIED BILLS:**

**IDEN./SIM. BILLS:**

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	State Universities & Private Colleges Policy Committee	10 Y, 0 N	Thomas	Tilton
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**SUMMARY ANALYSIS**

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities. To qualify as a resident for tuition purposes, a student, or the student’s parents if the student is a dependent, must have established legal residence in the state and maintained legal residence in the state for at least 12 months immediately prior to the student’s qualification.

HB 7107 revises provisions relating to the determination of a student’s residency status for tuition purposes. A person must reside in the state for 12 consecutive months immediately prior to initial enrollment in an institution of higher education in Florida to qualify as a resident for tuition purposes.

The bill provides criteria for documenting resident status and requires community colleges and state universities to determine residency status and dependency status at the time of a student’s admission.

The bill provides guidelines for reclassification of resident status. The student must provide clear and convincing evidence that supports permanent residency in the state rather than temporary residency for the purpose of pursuing an education.

The fiscal impact of the bill is indeterminate at this time. See FISCAL COMMENTS for additional information.

The effective date of this act is July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Current law requires students to be classified as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities.<sup>1</sup> To qualify as a resident for tuition purposes, a student, or the student's parents if the student is a dependent, must have established legal residence in the state and maintained legal residence in the state for at least 12 months immediately prior to the student's qualification. Presence in the state must have been for the purpose of maintaining a bona fide domicile, rather than for the purpose of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education. Every applicant for admission must make a statement as to his or her length of residence in the state and establish that his or her presence in the state currently is, and during the requisite 12-month qualifying period was, for the purposes of maintaining a bona fide domicile, rather than for the purpose of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

OPPAGA has examined issues relating to student residency in three different reports since 2003. OPPAGA report 03-29 found that 28% of the nonresident students in community colleges and 25% in state universities were reclassified as in-state residents by the end of a 3-year period. Because out-of-state students must pay more than Florida residents, this reclassification resulted in an annual loss in fee revenue. The 2003 report estimated this loss as \$28.2 million annually. OPPAGA's 2005 report found that the estimated annual loss in revenue had nearly doubled to \$56.5 million due in part to growth in nonresident students and tuition increases. OPPAGA's most recent review, a RESEARCH MEMORANDUM issued March 12, 2009, finds that the percentage of out-of-state students reclassifying as Florida residents has continued to increase since the earlier reports and that reclassification of out-of-state students admitted in 2005-06 to Florida resident status resulted in a loss of \$92.2 million over three years (2005-06 through 2007-08)<sup>2</sup>.

A more detailed discussion of each of these reviews is included in the sections that follow.

**OPPAGA Report 03-29:** A 2003 OPPAGA Special Review found that although Florida law and rules are intended to enable universities and community colleges to accurately and consistently classify students for in-state and out-of-state residency, the process was substantially flawed.<sup>3</sup> OPPAGA found that institutions were using inconsistent screening criteria and procedures creating the potential for

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<sup>1</sup> See s. 1009.21, F.S.

<sup>2</sup> This estimate assumes that nonresident students still would have attended a Florida institution even if they were not reclassified as Florida residents.

<sup>3</sup> *Id.*

misclassifications and variations in the threshold a student must meet to qualify for residency. OPPAGA identified three costly weaknesses in the criteria and procedures used at the time in classifying students as residents for tuition purposes:

1. The laws and rules did not provide adequate criteria governing under what specific circumstances students should be reclassified as Florida residents.
2. The criteria did not adequately specify the determination of students' dependency status.
3. Institutions were applying varying standards for documenting residency.

The 2003 report recommended that to improve the residency classification process, the Legislature should amend the law to require that students (or their parents if the students are dependents) must maintain legal residence in the state for at least 12 months immediately prior to the student's initial enrollment or registration at a Florida public postsecondary institution to be eligible for classification for in-state residency. OPPAGA also recommended that the Legislature more clearly define when a nonresident student could be eligible for reclassification as a resident.

**OPPAGA Report 05-41:** In 2005, OPPAGA published a progress report to inform the Legislature of actions taken in response to the 2003 report.<sup>4</sup> The progress report found that the Department of Education (DOE), the State Board of Education (SBE), and the Board of Governors (BOG) had taken most of the actions recommended by the 2003 report.

The SBE and BOG adopted rule changes to provide additional guidance in reclassifying students from nonresident to resident status.<sup>5</sup> The rule states that a student wishing to be reclassified must provide documentation which substantiates that he or she, or if a dependent, the student's parent, or guardian, is establishing Florida as a permanent domicile and not as a mere temporary residence incident to enrollment in higher education. The rule specifies a 12-month period of legal residence in the state prior to the first day of classes for the term for which residency is sought.

The 2005 report found that the recommendation to implement periodic internal reviews of residency decisions was not implemented. DOE noted that s. 1009.21, F.S., does not assign authority to the department to specifically address this problem. State audits do not focus on residency decisions. Accreditation standards for internal audits do not explicitly address residency decisions. OPPAGA's review found that, while some institutions validate residency determinations through internal audits and random sampling techniques, most of the institutions OPPAGA interviewed did not engage in this practice. The report noted that, given the high error rates found in the review, more thorough review of residency decisions was warranted.

**OPPAGA Research Memorandum (March 12, 2009):** OPPAGA has recently updated its work on the residency classification of students. The most recent report indicates that reclassification of out-of-state students to resident student status has continued to increase in both the State University System and the Florida College System. Almost 30% of the nonresidents entering the State University System in 2005-06 were reclassified as in-state students by the end of the 2007-08 academic year; 41% of nonresident students in the Florida College System were reclassified. OPPAGA speculates that the increase in the reclassification rate may be due to a more stringent enforcement of residency requirements for the initial residency determination.

### **Fee Waivers**

Current law authorizes each university board of trustees to waive tuition and out-of-state fees for purposes that support and enhance the mission of the university. Each university must report the purpose, number, and value of all fee waivers granted annually to the Board of Governors. The state universities reported out-of-state fee waivers totaling \$26,201,612 for 2006-07.<sup>6</sup> It is not clear if this number represents the total value of out-of-state fees waived by state universities. For example, the report indicates no out-of-state fee waivers for graduate assistants at UF although 3,052 graduate assistant matriculation waivers were provided valued at \$5,848,420. The report also indicates that UF provided 3,017 "university board of trustee" waivers valued at \$17,249,669. Information on who

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<sup>4</sup> Report 05-41, OPPAGA, *Department of Education Improves Rules Guiding Resident Tuition Determinations*.

<sup>5</sup> *Id.*

<sup>6</sup> State University System of Florida Fact Book, Table 37

receives the “university board of trustee” waivers or what fees are covered by the waivers was not available from the report.

### **Effect of Proposed Changes**

HB 7107 revises residency criteria to require that a person reside in-state for 12 consecutive months immediately prior to initial enrollment in an institution of higher education in Florida to qualify as a resident for tuition purposes.

The bill defines the term “initial enrollment” as the first day of class at an institution of higher education.

The term “institution of higher education” is defined as any community college as defined in s. 1000.21(3), F.S., or state university as defined in s. 1000.21(6), F.S.

Section 1000.21(3), F.S., defines the term “community college” to include the following institutions: Brevard Community College; Broward College; Central Florida Community College; Chipola College; Daytona Beach College; Edison College; Florida Community College at Jacksonville; Florida Keys Community College; Gulf Coast Community College; Hillsborough Community College; Indian River College; Lake City Community College; Lake-Sumter Community College; Manatee Community College; Miami Dade College; North Florida Community College; Okaloosa-Walton College; Palm Beach Community College; Pasco-Hernando Community College; Pensacola Junior College; Polk College; St. Johns River Community College; St. Petersburg College; Santa Fe College; Seminole Community College; South Florida Community College; Tallahassee Community College; and Valencia Community College.

Section 1000.21(6), F.S., defines the term “state university” to include the following institutions: the University of Florida; the Florida State University; the Florida Agricultural & Mechanical University; the University of South Florida; the Florida Atlantic University; the University of West Florida; the University of Central Florida; the University of North Florida; the Florida International University; the Florida Gulf Coast University; and New College of Florida.

The bill requires that legal residence must be established by written or electronic verification that includes two or more of the following Florida documents:

- A voter information card;
- A driver’s license;
- An identification card issued by the state;
- A vehicle registration;
- A declaration of domicile;
- Proof of purchase of a permanent home;
- Proof of a homestead exemption in the state;
- A transcript from a Florida high school;
- A Florida high school equivalency diploma and transcript;
- Proof of permanent full-time employment;
- Proof of 12 consecutive months of payment of utility bills;
- A domicile lease and proof of 12 consecutive months of payments; or,
- Other official state or court documents evidencing legal ties to Florida.

All of these documents must demonstrate clear and convincing evidence of continuous residence in the state for at least 12 consecutive months prior to the student’s initial enrollment in an institution of higher education.

The bill clarifies that a dependent child can claim residency by documentation of his or her parent’s legal residence and its duration, as well as documentation confirming his or her status as a dependent child. The documentation must provide clear and convincing evidence that residency in Florida was for a minimum of 12 consecutive months prior to the student’s initial enrollment in an institution of higher education.

The bill provides for reclassification from nonresident to resident if a person provides documentation that supports the person's permanent residency in the state such as documentation of permanent full-time employment for the prior 12 months or purchase of a home in this state and residence therein for the prior 12 months while not enrolled at an institution of higher education. If a dependent child's parents or parent moves to Florida while the child is in high school and the child graduates from a high school in this state, the child may become eligible for reclassification as a resident for tuition purposes when the parent qualifies for permanent residency.

The bill requires each community college and state university to determine the dependency status of students who have been admitted and affirmatively determine that applicants who have been admitted as Florida residents meet the residency requirements at time of initial enrollment.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 1009.21, F.S.; revising definitions; revising provisions relating to qualification as a resident for tuition purposes; providing for reclassification of status; providing duties of institutions of higher education.

Section 2. Providing an effective date of July 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Under the provisions of the bill, a student may be required to pay the out-of-state fee if the student is not eligible for reclassification.

**D. FISCAL COMMENTS:**

In 2007-08, the state provided approximately 70 percent of the cost of instruction for Florida residents enrolled in community colleges and state universities with students paying the balance with tuition. To the extent the proposed changes result in fewer out-of-state students being reclassified as Florida residents, there may be increased revenues collected by community colleges and state universities and cost savings to the state if these students choose to continue their education at a Florida community college or state university.

OPPAGA's 2003 review found that about 25% of out-of state students were reclassified as residents at community colleges and universities with a resulting loss of \$28.2 million. Another review conducted by OPPAGA in 2005 found higher education institutions would gain an estimated \$56.5 million in revenue if nonresident students were not reclassified. OPPAGA'S most recent review found that reclassification

of out-of-state students admitted in 2005-2006 to Florida resident status resulted in a loss of \$92.2 million over three years (2005-06 through 2007-08). These estimates assume that nonresident students who were reclassified still would have attended a Florida institution even if they were not reclassified as Florida residents.

The bill does not impact the ability of state universities to issue fee waivers.

The exact fiscal impact is indeterminate.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

#### **B. RULE-MAKING AUTHORITY:**

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

- Clarification may be needed on the definition of "initial enrollment." As written, it could be interpreted to mean the initial enrollment of a student at a given institution or a student's initial enrollment at the first institution attended.
- Clarification may be needed on the reclassification of dependent students whose parents move to the state and the reclassification of nonresident students who marry Florida residents.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**